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and certain subsidiaries

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	In Proceedings Under Chapter 11
)	
BAPTIST FOUNDATION OF ARIZONA, an)	Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and)	13364-ECF-GBN
related proceedings,)	
)	All Cases Jointly Administered Under Case
)	No. 99-13275-ECF-GBN
Debtors.)	
)	DEBTORS' OBJECTION TO CLAIM OF
)	JAMES F. COOK AND RELATED PARTIES
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and or its affiliates and subsidiaries, some of which also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proofs of claim filed by James F. Cook and Carolyn S. Cook (the “**Cooks**”); James F. Cook and Carolyn S. Cook as Trustees of the James F. Cook Family Trust (the “**Cook Family Trust**”); James F. Cook as Managing Member of Cook

Family Investments, L.L.C. (“**Cook Investments**”); James F. Cook as a Member of Cora Properties, L.L.C. (“**Cora Properties**”); and James F. Cook and Carolyn Cook as beneficiaries of the Cook Charitable Trust (“**Cook Charitable Trust**”) (collectively, the “**Cook Parties**”). In support of this objection, BFA offers the following memorandum of points and authorities.

MEMORANDUM IN SUPPORT OF OBJECTION

I. INTRODUCTION

Cook is a former director of Baptist Foundation of Arizona. BFA has reason to believe that Cook is a person whose conduct, both individually and through the Cook Parties, may have engaged in improper transactions with BFA and other related entities. According, BFA objects to the Cook Parties claims in this case.

II. BASIS FOR OBJECTION

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.” Section 502(b) provides that “[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount.” Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules “shall constitute prima facie evidence of the validity and amount of the claim.” The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, “the ultimate burden of persuasion is always on the claimant.” In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)). A properly supported objection to a claim initiates a

contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007(adv. comm. note).

A. General Objection

As a result of ongoing internal investigations, as well as other information provided to BFA, BFA believes that it has certain civil claims for money damages against Persons, as defined in the Liquidating Plan, who may have been responsible for BFA's failure. The term "Litigation Claims" is broadly defined in the Liquidating Plan. Exhibit 4 to the Liquidating Plan lists certain Litigation Claims. Specifically, Exhibit 4 identifies proceedings in which BFA has asserted claims against certain Persons, as that term is defined in the Liquidating Plan. Exhibit 4 also identifies certain persons against whom BFA and its Non-Debtor Affiliates may have claims, but against whom BFA and the Non-Debtor Affiliates have not commenced legal proceedings because the claims are not fully developed, either legally or factually. As set forth on Exhibit 4, such persons include James F. Cook. BFA further believes that James F. Cook may have used other Cook Parties to facilitate the conduct that contributed to BFA's failure.

Investigations into claims against potentially responsible parties are ongoing and will continue through the conclusion of the Chapter 11 proceedings and in connection with the actual prosecution of Litigation Claims. The events leading to BFA's failure are complex and occurred over time. Thus, despite the due diligence conducted to date by BFA, there are still many unanswered questions and facts to discover. BFA reserves the right to assert defenses and to claim offsets to the claims of the Cook Parties. This general objection applies in addition to the more specific objections described below.

B. Specific Objections

1. Claim of Cook Family Trust

On March 21, 2000, Cook Family Trust filed a proof of claim alleging that it deposited \$2 million in an Easy Access Account with BFA, which transaction is the subject of a pending, state-court civil action. BFA does not contest Cook Family Trust's characterization of that transaction in its proof of claim. BFA objects to this claim, however, to the extent that BFA is informed and believes that Cook exercised control and direction over the assets in the Cook Family Trust in a manner that may obviate his or the Trust's right to assert this claim. In addition, BFA reserves the right to assert offsets to this claim as described above. Finally, Cook Family Trust claims consequential damages of \$1 million based on an allegation that its inability to access the aforementioned \$2 million prevented it from consummating a real property transaction in North Carolina. BFA objects to this portion of the claim as unforeseeable, speculative, not allowed under applicable law, and as lacking sufficient foundation to establish *prima facie* the merits of the alleged claim or claims.¹

2. Claim of Cook Investments and the Cooks as its Members

On March 21, 2000, Cook Investments (and its members, the Cooks, as individuals) filed a proof of claim seeking approximately \$15 million as the value of an ownership interest in Pleasant Point, L.L.C. ("**Pleasant Point**"). Pleasant Point is the debtor in a pending Chapter 11 case. To the extent that Cook Investments and the Cooks accurately characterize the nature and value of the interest predicting their claim (which BFA does not concede), this claim relates to an equity interest in Pleasant Point that is subordinate to claims of creditors. Moreover, it appears

¹ The Cooks also characterize the claims of Cook Family Trust and of Cook Family Investments as (at least partially) Investor Claims. To the extent that this characterization is factually and legally appropriate, which BFA does not concede, BFA incorporates by reference its general objection to all Investor Claims, filed separately.

that this claim is derivative in at least two ways: first, the Cooks' interest in Pleasant Point is derivative of their interest in Cook Investments; second, it appears from the description of this claim that Pleasant Point's interest in the described real property also is derivative. Finally, this claim is the subject of an agreed order filed in this case on October 30, 2000. That order resolves fully Cook Investments' and the Cooks' claim to any proceeds of the sale of Pleasant Point, as well as any other claim arising from their asserted ownership interest in Pleasant Point.

3. Claims of the Cook Charitable Trust and the Cooks as Its Beneficiaries

On March 21, 2000, the Cooks, as Beneficiaries of the Cook Charitable Trust, filed proof of claim asserting that BFA had managed the Cook Charitable Trust, and claiming the right to seek \$8 million in damages if the Cook Charitable Trust is dissipated due to the fault of BFA as its former trustee. This claim is purely contingent and unliquidated. Moreover, the Cooks do not currently have standing to assert a claim, as the Cook Charitable Trusts continues in effect and the Cooks claims are derivative in nature.

On March 31, 2000, Cook Charitable Trust, through its current trustee, Mitchell C. Laird, also filed a proof of claim alleging that BFA abused its discretion and breached its fiduciary duty when it served as trustee of the Cook Charitable Trust, and further alleging that "the Trust has conspiracy claims, fraud claims and other similar causes of action." No further detail is given, although the trustee has "attached . . . a sampling of a few key documents that reference one of the claims the Trust has against" BFA. The attached documents are operating agreements and related documents for Sovereign—Sherwood Crossing, L.L.C.,² but there is no explanation how

² BFA believes that it has affirmative claims relating to this transaction, and reserves the right to claim offsets against any claim to which Cook Charitable Trust might otherwise be entitled relating to this transaction.

these documents relate to or evidence any claim. BFA objects to the trustee's claim as contingent and unliquidated, and as lacking sufficient foundation to establish *prima facie* the merits of the alleged claim or claims.

Furthermore, any claimed losses suffered by the Trust may be the result of improper conduct on the part of the beneficiary of the Trust, including improper control or direction over Trust assets. Finally, BFA reserves the right, as set forth above in its General Objection, to assert claims against the Cook Charitable Trust, and/or to assert offsets against this claim.

4. Claims of Cora Properties

On March 21, 2000, Cora Properties filed a proof of claim seeking between \$750 thousand and \$1 million, as the excess value of certain real property that Cora Properties allegedly pledged as security for an outstanding loan of \$700 thousand from BFA to Cora Properties. This loan currently is in default, and it is entirely unclear whether the real property referred to by Cora Properties will be sufficient to satisfy the debt. In addition, Cora Properties fails to give any accounting of the debt, any basis for concluding that it owns the real property at issue, or any basis for the alleged valuation of that property. This claim also appears to be contingent, unliquidated, and also may be derivative in nature. Finally, BFA objects that this claim lacks sufficient foundation to establish *prima facie* the merits of the alleged claim or claims

IV. CONCLUSION

For the above-described reasons, BFA respectfully requests that the Court set each of the claims of the Cook Parties for evidentiary hearing, require each claimant to adduce admissible evidence demonstrating by a preponderance the merits of each claim, and disallow each claim to the extent merited by the facts and law applicable to each such claim.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

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